

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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AKF, INC. d/b/a FUNDKITE,

Plaintiff,

-against-

CREATIVE FIBERGLASS, LLC, A SHOWROOM
SHINE DETAILING SHOP LLC, AND ROBERT
ALAN COLOMBO, SR.,

Defendants.

MEMORANDUM AND ORDER

Case No. 1: 19-cv-06994-FB-PK

Appearances:

For the Plaintiff:

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BLOCK, Senior District Judge:

Plaintiff AKF, Inc. d/b/a Fundkite (“Fundkite”) brought this action against Creative Fiberglass, LLC, A Showroom Shine Detailing Shop LLC, and Robert Alan Colombo, Sr. (collectively “Defendants”) alleging breaches of a revenue purchase agreement. On June 30, 2021, this Court imposed a default judgment against Defendants and granted leave to Fundkite to submit an application for reasonable attorneys’ fees and costs. Plaintiff now moves for attorney’s fees and costs before this Court. This motion is unopposed.

The breached contract between Fundkite and Defendants contained a provision covering attorneys’ fees in the event of default. A contractual provision which provides for reasonable costs, including attorneys’ fees and costs, is enforceable. *See LG Cap. Funding, LLC v. Volt Solar Sys., Inc.*, No. 15-CV-1404 (KAM) (VMS), 2016 WL 11447845, at *9 (E.D.N.Y. Aug. 15, 2016), R&R adopted, 2016 WL 4718014 (E.D.N.Y. Sept. 9, 2016) (awarding attorneys’ fees when a party defaulted on a contract that evidenced the parties’ clear intent to provide for such fees in the event of default). In this case, however, the parties contracted to pay a fixed amount in attorneys’ fees in the event of default. The court is not bound to grant the fixed percentage set forth in the contract, but has the authority to determine reasonable attorneys’ fees. *See Orix Credit All. V. Grace Indus.*, 261 A.D.2d 521, 521 (2d Dep’t 1999); *see also Diamond D Enters. USA*,

Inc. v. Steinsvaag, 979 F.2d 14, 20 (2d Cir. 1992) (adopting the New York state rule regarding attorneys' fees contract provisions).

Thus, the Court must determine if the attorneys' fees that Fundkite now seeks are reasonable. This determination is made by finding a reasonable hourly rate and a reasonable number of hours of work required by the case. *See Millea v. Metro-N R.R. Co.*, 658 F.3d 154, 166 (2d Cir. 2011). A party seeking attorneys' fees must submit "contemporaneous time records" specifying "the date, the hours expended, and the nature of the work done." *N.Y. State Ass'n for Retarded Children, Inc. v. Carey*, 711 F.2d 1136, 1148 (2d Cir. 1983). Fundkite's attorneys' records indicate that they collectively spent approximately 46.9 hours, billed at \$300.00 per hour for two of the attorneys and \$150.00 per hour for the third attorney, on this case during the period between December 13, 2019 and June 30, 2021. The total of \$15,140.00 also accounts for a \$2,000.00 flat fee to commence the lawsuit. In addition, Fundkite's attorneys seek reimbursement of \$805.65 in costs, for which they included an itemized list of expenses.

Counsel submitted contemporaneous time records in compliance with *Carey*. *See* ECF 74-4 at 2-7. The hourly rates claimed are also within the range of attorneys' fees found to be reasonable in this district. *Sass v. MTA Bus Co.*, 6 F. Supp. 3d 238 (E.D.N.Y. 2014) (stating that when counsel seeking attorneys' fees does not submit the prevailing market rate for attorneys with similar skills

litigating cases similar to plaintiff's, the court has discretion to determine a reasonable hourly rate based on prevailing rates in the district). Also, notably, Defendants do not object to counsel's requested number of hours or hourly rate. Accordingly, plaintiff's motion for attorney's fees and costs is granted in the amount of \$15,945.65.

IT IS SO ORDERED.

/S/ Frederic Block
FREDERIC BLOCK
Senior United States District Judge

November 4, 2021
Brooklyn, New York